THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition No.23279 of 2006

Date: 8th November, 2006

Between :-

Shashikanth Shah ..
Petitioner

And

Municipal Corporation of Hyderabad rep. by its Commissioner, BRKR Bhvan, Hyderabad and 3 others ..
Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.23279 of 2006

ORDER:-

1. The matter is coming up for *admission*.

2. Sri Ghanta Rama Rao takes notice on behalf of R.1 to R.4.

3. The Counsel for petitioners Sri V.M.M.Chari states that without following the procedure, the respondents are interfering with the petitioner's property which is the subject matter of the Writ Petition. Hence, suitable directions to be given.

4. Sri Ghanta Rama Rao however submits that the demolition activity will not be taken up unless and until due process of law is followed.

5. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in interfering with the petitioner's fundamental and constitutional rights in respect of the petitioner's property in Pr.No.18-4-39 to 41 situated at Aliabad, Near Engine Bowli, Hyderabad, as being contrary to the provisions of the Land Acquisiton

Act, 1894 and Hyderabad Municipal Corporation Act 1955 apart from being illegal, arbitrary, unconstitutional and in the breach of principles of natural justice and consequently direct the respondents not to interfere with the petitioner's rights except in accordance with law and to pass such other suitable orders.

6. It is stated that the writ petitioner is absolute owner and possessor of the property bearing Pr.No.18-4-39 to 41 situated at Aliabad, Near Engine Bowli, Hyderabad having acquired the same by way of a gift deed from the petitioner's father. The property was purchased by the father of the petitioner by virtue of a registered sale deed. The copies of the said documents had been produced. It is also stated that on 20-1-2006 the petitioner made an application to the 1st respondent for grant of permission for the construction of Ground + 2 floors to be used for commercial purpose and also paid the building permit fee of Rs.1,13,171/-. It is further stated that after the said application was submitted, the petitioner received a communication dt.18/23-05-2006 from the 2nd respondent wherein it was mentioned that the building committee of the 1st and 2nd respondents stipulated the condition to the petitioner shall maintain the set-backs as prescribed and the petitioner shall surrender 208.16 sq.mts (245 Sq.Yds)

of the property to the respondents for the proposed widening of the road for free of cost and asked the petitioner to submit revised plans. Several other factual details also are narrated in paras 7 to 22 in the affidavit filed in support of the Writ Petition.

7. The order dated 01-11-2006 issued by the Asst.City Planner, Town Planning Section, Circle No.I, Sardarmahal, Charminar, Hyderabad reads as hereunder:-

Office of the Asst.City Planner,
Town Planning Section, Circle No.I,
Sardarmahal, Charminar, Hyderabad.

Lr.No.444/ACP/C1/MCH/2006
Dt.01-11-06.

To
The Shashikanth Shah,
Pr.No.18-4-39 to 41,
Aliabad, near Ingine Bowli,
Hyderabad.

Sir,

Sub:- MCH – T.P.Section – Circle No.I – Request to hand over the affected portion of Pr.No.18-4-39 to 41, situated at Aliabad, near Ingine Bowli, affecting under Charminar to Falaknuma Road – Reg.

Ref:- 1) Your building application dt.20-1-06.
2) Minutes of the building committee meting held on 26-2-2006
3) This office letter No.39 to 41/4/18/2006/1230,

dt.23-5-2006

Kind attention is invited to the reference 1st and 2nd cited, wherein you have submitted the construction permission for the proposed construction of Ground, First and Second floor, simultaneously the MCH has examined and accorded the permission basing on the building committee meeting vide this office letter 3rd reference cited, so far you are not compliance and submitted revise plan.

Therefore, you are hereby directed to submit the evise plan and hand over the affected portion as per plan within a week days by receipt of this letter, in case of failure the accorded permission will be revoke and affected portion will be taken under Land Acquisition process.

Yours faithfully,
sd/-
Asst.City Planner,
Circle No.I, M.C.H.

8. The representation made by the petitioner dated 7-11-2006 in this regard to the Office of the Assistant City Planner, Town Planning Section, Circle No.I, reads as hereunder:-

Date:7-11-2006

To
The Office of the Asst.City Planner,
Town Planning Section, Cirlce No.I,
Sardarmahal, Charminar,
Hyderabad.

Sir,

Sub:- MCH – T.P.Section – Cirlce No.I, Request for grant
permission of Pr.No.18-4-39 to 41, situated at Aliabad, near Ingine Bowli, Charminar to Falaknuma Road – Reg.

Ref:- 1)My building application dt.20-1-2006
2) Minutes of the building committee

meeting held on

26-2-2006.

3) Your office letter No.39 to 41/4/18/2006/1230,

dated 23-5-2006.

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With reference to the above subject cited, your authority insisting me to surrender 208.16 sq/mts per proposed extension of 100 fts wide road, on free of cost to MCH, which is moe than 20 lakhs worth

In response to your letter under Ref.No.4 asked the applicant to submit revised plans, I am redy to submit the revised plans as per your instructions and building committee, you have not called me in the meeting as such I am not aware of the additions, alterations and any deletion as per the plan submitted by me. Kindly indicate the said objections by marking in the plan and supply a copy of the said plan. Enable me to submit the revised plans as per your suggestions and indication in the plan as early as possible, waiting for your reply and the plan.

Thanking you,

Yours faithfully,

(Shashikanth Shah)

9. The main grievance of the writ petitioner is that inasmuch as the writ petitioner had not given consent, the respondents are bound to follow the procedure in accordance with the provisions of the Land Acquisition Act 1894. It is needless to say that if the respondents are interested in taking up any demolition activity in relation to the subject matter of the Writ Petition, the respondents are bound to follow the procedure as specified by the provisions of the Hyderabad Municipal Corporation Act 1955. In view of the same, this Court is of the considered

opinion that the Writ Petition be disposed of directing the respondents not to resort to any demolition activity of the subject matter of the Writ Petition unless and until the respondents follow the due process of law.

10. Accordingly, the Writ Petition is disposed of. No order as to costs.

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Justice P.S.Narayana

8th November, 2006

Note:- Operative portion of the order
by wire at party's costs
(B/o. smr)